



## **Supplemental Comments of the Alliance of Nonprofit Mailers**

### **To the Presidential Commission on the Postal Service**

*July 8, 2003*

The Alliance of Nonprofit Mailers respectfully submits these comments in response to questions raised by a handful of commentators about the longstanding national policy of maintaining reduced postal rates for nonprofit organizations.

The Commission has identified many difficult and unresolved policy issues during the past few months. Nonprofit postal rates are not such an issue. Special nonprofit rates have existed for more than a century. The long-standing existence of these rates has reflected, and continues to reflect, an overwhelming public consensus that reduced postal rates are justified by the good that these organizations contribute to the welfare of this country. Nothing has occurred in recent years to justify a change in this policy.

The first statutory rate preference for nonprofit organizations dates to 1894, when Congress exempted certain classes of nonprofit publications — including publications of fraternal and benevolent societies, institutions of learning, trade unions, and professional literary, historical and scientific societies — from the paid subscriber requirement for second-class mail. Act of July 16, 1894, 28 Stat. 104, 105. In enacting this legislation, Congress found that publications of these organizations had sufficient “public character” to qualify for second-class rates. Cong. Rec. (Apr. 5, 1894) at 3488; 5 Op. Asst. Atty. Gen. P.O. Dept. 214-221 (July 27, 1909).

In 1917, Congress exempted the publications of certain nonprofit organizations (i.e., religious, educational, scientific, philanthropic, agricultural, labor and fraternal organizations) from rate increases imposed on other second-class mail, thereby creating a separate nonprofit subclass within second-class mail. Act of Oct. 3, 1917, 40 Stat. 300, 328. By World War II, nearly 3,000 nonprofit publications were being mailed under these rates. Charles A. Heiss, *Report on Second-Class Mail* 25-28 (1946).

In 1951, Congress exempted qualified nonprofit organizations from an increase in *third-class* rates, thereby carving out a nonprofit subclass within that class of mail as well. Act of

October 30, 1951, 65 Stat. 672-74. The 1951 legislation followed extensive hearings illuminating the benefits to society provided by nonprofit organizations, and the likelihood that reduced postal rates would serve as an effective multiplier of those benefits. *See, e.g., Adjustment of Postal Rates, Part 2: Hearings on S. 1103 before the Senate Comm. on Post Office and Civil Service*, 81<sup>st</sup> Cong., 1<sup>st</sup> Sess. 702 (1949) (testimony of Philip G. Rettig on behalf of the National Society for Crippled Children and Adults); *Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service*, 81<sup>st</sup> Cong., 2d Sess 184-85 (1950) (testimony of National Foundation for Infantile Paralysis).

In response to the burgeoning volume of advertising matter carried by nonprofit second-class publications, Congress amended Title 39 in 1967 to established zoned rates of postal for the advertising content of nonprofit publications. After considering the benefits of nonprofit publications, however, Congress deliberately chose to keep the rates of postage for advertising matter well below the corresponding rates applicable to for-profit publications. Act of Dec. 16, 1967, 81 Stat. 613, 615-17.

The Postal Reorganization Act of 1970 eliminated much Congressional and political influence in postal affairs, including authority over most aspects of postal rate setting. Significantly, however, Congress chose to retain direct control over the level of nonprofit rates. First, Congress specified that nonprofit rates would be limited to the costs attributable to the nonprofit subclasses. Unlike other mail users, nonprofit organizations were not required to bear any share of the institutional or overhead costs of the USPS. Second, nonprofit rates currently below that level would be allowed a ten-year phase-in period to reach the attributable cost level. Nonprofit rates could exceed the attributable cost level only if Congress failed to appropriate the necessary funds to cover the revenue otherwise foregone by the Postal Service. *See* Postal Reorganization Act of 1970, 84 Stat. 719, 762-63.

In 1974, Congress extended the phasing period from ten to 16 years. Act of June 30, 1974, 88 Stat. 287-88. The legislation passed easily after extensive debate, much of it praising the contributions of nonprofit organizations. *See* Cong. Rec. (May 9, 1974) at 14050-60, 14075-78; *id.* (June 19, 1974) at 19802-17.

This statutory mechanism worked reasonably well until the early 1990s, when increasing shortfalls in the federal budget began to make the annual process of funding the revenue forgone appropriation increasingly problematic. As the annual budget crunches loomed, critics of nonprofit rates began to call for the restriction, or even the outright elimination, of nonprofit rate preferences. *See* Postal Rate Commission Docket No. SS91-1, *Report to the Congress: Third-Class Nonprofit Mail Study 19* (July 8, 1991) (noting proposals to eliminate nonprofit postal rates). After extensive hearings and debate, however, Congress declined to eliminate or phase out nonprofit rates.

In 1990, Congress imposed a number of new eligibility restrictions designed to exclude from the nonprofit mailstream a variety of mail matter that Congress regarded as fundamentally commercial in nature. *See* Pub.L 101-509 § 1(a). But Congress left the existing rate preferences otherwise unchanged.

In 1992, Congress chose to appropriate no funds whatsoever for revenue forgone in FY 1993. Congress declined to allow nonprofit rates to rise to commercial levels, however, freezing preferred rates at their existing levels, and directing the Postal Service to treat the shortfall as a prior-year loss in its next omnibus rate case. *See* Pub.L. 102-393, Title II.

Congress arrived at a longer-term legislative solution the next year. In 1993, Congress enacted legislation permanently eliminating the revenue forgone appropriation. Congress was unwilling to allow nonprofit rates to rise to commercial levels, however. Instead, Congress directed that the resulting revenue shortfall would be shared by nonprofit mailers and other users of the mails. Henceforth, nonprofit mailers would be responsible for the full attributable costs of their mail as well as one-half of the institutional cost markup paid by the most closely corresponding regular rate class. *See* Pub.L. 103-123. To insulate against dramatic rate increases, the markup for institutional costs paid by nonprofit mailers were phased-in over six years. The 1993 legislation also included new restrictions to tighten eligibility for preferred rate mail.

In 2000, certain anomalies resulting from the cost data submitted in the R2000-1 omnibus rate case threatened to impose a serious impact on the nonprofit mailing community. A bipartisan Congress again reaffirmed support for the preferred rate privilege. Congress replaced the 1993 legislative scheme (which established nonprofit markups over attributable costs as a percentage of the corresponding commercial markups) with a new mechanism that sets preferred rates directly as a percentage of the corresponding commercial rates. Pub.L. 106-384. Once again, the legislation reflects a renewed legislative determination that the benefits provided by nonprofit organizations warrant the continuation of rate preferences for nonprofit mail. As stated by Chairman John McHugh, a cosponsor of the legislation, during the House debate (*Cong. Rec.* (Oct. 11, 2000) at H9801):

Simply put, this is an extremely important piece of legislation to ensure the financial viability and survivability of nonprofit mailers, the kinds of nonprofit mailers that all of us have and enjoy in our communities, churches, charitable organizations, educational publications and so many others.

The nonprofit community is appreciative of the many efforts of the Administration to provide additional tools to the nonprofit sector to allow for greater productivity in support of the nonprofit mission. We rely upon the preferred postal rate to disseminate information and raise the necessary funds to address the social challenges of the day. Continuation of the preferred postal privilege is consistent with the Administration's emphasis on the role of individuals and organizations to address the myriad of social needs in our society today.